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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,024	02/21/2002	Timothy J. Miller	P0201	7751
7590	05/13/2005		EXAMINER	
JEAN KYLE P. O. BOX 2274 HAMILTON, MT 59840-4274			GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/080,024

Applicant(s)

MILLER ET AL.

Examiner

Harry A. Grosso

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Applicant's admission that the grouped species are not patentably distinct is acknowledged and the election of species is withdrawn.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 12-16 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps (5,163,587).

1. Regarding claim 12, Apps discloses a storage system for storing and organizing articles by consisting of a plurality of containers capable of being stacked or placed adjacent to one another, and capable of have articles placed in them (Figure 1, column 2, lines 48-52). The examiner considers the placement of the container in an appliance as intended use and the containers would be capable of being placed, stacked or adjacent to one another within the interior of an appliance.

2. Regarding claim 13, Apps discloses the containers are capable of being stacked or nested (Figures 8 and 9, column 2, lines 55-65).

3. Regarding claims 14-15, Apps discloses the storage system of claim 12. The examiner considers the placement of the container in a freezer or chest freezer as intended use and the containers would be capable of being dimensioned to fit within the interior of a freezer or chest freezer. It would have been obvious to place the containers, in stacked or adjacent configuration, in a freezer to protect the content, if required.

4. Regarding claim 16, Apps discloses that the containers are made of a thermoplastic material, polyethylene.
5. Regarding claims 18-20, Apps discloses a plurality of containers with a peripheral flange (44, Figure 2) with cutout sections along the interior edges of the flange as well as under the downward extension of the flange at handles 46 and 48.
6. Claims 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Constantine (3,7590,416).
7. Regarding claim 12, Constantine discloses a storage system for storing and organizing articles by providing a plurality of containers capable of being stacked or placed adjacent to one another (Figure 3) the containers are capable of receiving articles. The examiner considers the placement of the container in an appliance as intended use and the containers would be capable of being placed, stacked or adjacent to one another within the interior of an appliance. It would have been obvious to place the containers, in stacked or adjacent configuration, in an appliance if so desired.
8. Regarding claim 13, Constantine discloses the containers are capable of being stacked or nested (Figures 2 and 3).
9. Regarding claims 14 and 15, Constantine discloses the storage system of claim 12. The examiner considers the placement of the containers in a freezer or chest freezer as intended use and the containers would be capable of being dimensioned to fit within the interior of a freezer or chest freezer. It would have been obvious to place the containers, in stacked or adjacent configuration, in a freezer to protect the content, if required.

10. Regarding 16 and 17, Constantine discloses that the container is made of polypropylene (column 3, lines 53-55).
11. Claims 1, 3, 6, 7 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by DeMars (5,409,126).
12. Regarding claims 1, 3 and 12, DeMars discloses a method of placing articles in a container and storing and organizing a plurality of stacked containers in a refrigerator (Figure 3, column 2, lines 5-13). The containers are also capable of being placed adjacent to one another.
13. Regarding claim 6, DeMars discloses the container is made of plastic (column 3, lines 39-40).
14. Regarding claim 7, DeMars discloses a peripheral flange (Figure 7).
15. Claims 1, 3, 4, 6, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Soehnlén et al (6,103,287).
16. Regarding claims 1, 3, 4, 12 and 14, Soehnlén et al ('287) discloses a method of placing articles in a container and storing and organizing a plurality of stacked containers in a freezer (Figure 10, column 5, line 65 to column 6, line 1 and column 6, lines 57-60). The containers are also capable of being placed adjacent to one another.
17. Regarding claim 6, Soehnlén et al discloses the container is made of plastic (column 6, lines 4-6).

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 1-7, 9-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps (5,163,587) in view of DeMars (5,409,126), Soehnlén et al (6,103,287) or Soehnlén et al (6,889,837).

20. Regarding claims 1, 3-5, 12 and 14-15, Apps discloses a method of storing and organizing articles by providing a plurality of containers capable of being stacked or placed adjacent to one another, the containers are capable of receiving articles and have articles placed in them (Figure 1, column 2, lines 48-52). Apps does not teach the placement of the containers in a refrigerator or freezer (appliance). DeMars discloses a method of storing and organizing a food product in stacked containers in a refrigerator (column 2, lines 5-13). Soehnlén et al ('287) discloses a method of storing and organizing a food product in stacked containers in a freezer (Figure 10, column 5, line 65 to column 6, line 1 and column 6, lines 57-60). Soehnlén et al ('837) discloses storing a food product in containers in a chest freezer (column 5, lines 46-48).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the method of storing and organizing articles as disclosed by Apps in refrigerators or freezers as disclosed by DeMars and Soehnlén et al respectively to protect the contents of the containers from spoilage as required.

21. Regarding claims 2 and 13, Apps discloses the containers are capable of being stacked or nested (Figures 8 and 9, column 2, lines 55-65).

22. Regarding claims 6, 7 and 16, Apps discloses that the containers are made of a thermoplastic material, polyethylene.

23. Regarding claims 9-11 and 18-20, Apps discloses a plurality of containers with a peripheral flange (44, Figure 2) with cutout sections along the interior edges of the flange as well as under the downward extension of the flange at handles 46 and 48.

24. Claims 1-8 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Constantine (3,759,416) in view of DeMars (5,409,126), Soehnlén et al (6,103,287) or Soehnlén et al (6,889,837).

25. Regarding claims 1 3-5, 12, 14 and 15, Constantine discloses a method of storing and organizing articles by providing a plurality of containers capable of being stacked or placed adjacent to one another (Figure 3) the containers are capable of receiving articles. Constantine does not teach the placement of the containers in a refrigerator or freezer (appliance). DeMars discloses a method of storing and organizing a food product in stacked containers in a refrigerator (column 2, lines 5-13). Soehnlén et al ('287) discloses a method of storing and organizing a food product in stacked containers in a freezer (Figure 10, column 5, line 65 to column 6, line 1 and column 6, lines 57-60). Soehnlén et al ('837) discloses storing a food product in containers in a chest freezer (column 5, lines 46-48). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the method of storing and organizing articles as disclosed by Constantine in refrigerators or freezers as disclosed by DeMars and Soehnlén et al respectively to protect the contents of the containers from spoilage as required.

26. Regarding claims 2 and 13, Constantine discloses the containers are capable of being stacked or nested (Figures 2 and 3).

27. Regarding claims 6-8, 16 and 17, Constantine discloses that the container is made of polypropylene (column 3, lines 53-55).

Response to Arguments


28. Applicant's arguments filed March 1, 2005 have been fully considered but they are not persuasive. Applicant argues that references do not suggest or describe the storage system or method of the subject invention, which he indicates is a food storage system and method that efficiently utilizes space. Applicant indicates that an example of use of his system is in a freezer compartment. Applicant also cites numerous advantages of his disclosed invention. In response, Apps and Constantine describe storage systems that utilize stacking of the filled containers and nesting of empty containers for efficient use of space and meet the limitations presented in the claims. They are intended for use in the food products area. The examiner considers applicant's example of use of the system in a freezer compartment as an example of intended use in claims 12-20 and the systems of Apps and Constantine would be capable of being used in a freezer compartment or the interior of any appliance and providing the advantages of the invention. With regard to claims 1-11, the method of storing and organizing articles including the step of placing articles in containers and placing the containers adjacent to one another and stacked to organize the interior of an appliance, the teachings of Demars and Soehnlen et al have been used as set forth above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


NATHAN J. NEWHOUSE
PRIMARY EXAMINER

Per
—

Lee Young
Supervisory Patent Examiner
Art Unit 3727

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